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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FIVE

**In re JUAN D., a Person Coming Under
the Juvenile Court Law.**

THE PEOPLE,

Plaintiff and Respondent,

v.

JUAN D.,

Defendant and Appellant.

A130776

**(Mendocino County Super. Ct.
No. SCUKJDSQ 10-1596001-002)**

The juvenile court committed the minor Juan D. (appellant), born in May 1994, to the California Department of Corrections and Rehabilitation, Division of Juvenile Justice (DJJ).¹ To do so, the court dismissed appellant's most recent juvenile delinquency petition (Welf. & Inst. Code, § 602),² which alleged an offense that did not qualify him for a DJJ commitment (§ 733, subd. (c)) (section 733(c)) and reached back to an earlier

¹ As of July 1, 2005, the correctional agency formerly known as the Department of the Youth Authority (or California Youth Authority) became known as the Department of Corrections and Rehabilitation, Division of Juvenile Facilities (DJF). The DJF is part of the DJJ. (Welf. & Inst. Code, § 1710, subd. (a); Pen. Code, § 6001; Gov. Code, §§ 12838, subd. (a), 12838.3, 12838.5, 12838.13.) Statutes that formerly referred to the Department of the Youth Authority, such as Welfare and Institutions Code section 733, now refer to the DJF. The juvenile court and the parties on appeal, however, refer to the authority to which appellant was committed as the DJJ. We will do likewise.

² All undesignated section references are to the Welfare and Institutions Code.

petition that alleged a DJJ-eligible offense (§ 707, subd. (b)). On appeal, we reversed the order of commitment, concluding the court lacked authority under section 782 to dismiss appellant's most recent petition in order to commit him to DJJ.

The Supreme Court granted review, and it recently transferred the matter back to this court for reconsideration in light of *In re Greg F.* (2012) 55 Cal.4th 393 (*Greg F.*). *Greg F.* held dismissal of a petition for the purpose of allowing a DJJ commitment on a minor's previously-sustained section 602 petition is appropriate under section 782 so long as the juvenile court finds that the dismissal is required by the interests of justice and the welfare of the minor. (*Id.* at p. 420.) Following *Greg F.*, we affirm the juvenile court's orders.

BACKGROUND

In May 2010, appellant admitted two counts of a four count juvenile delinquency petition (§ 602), filed in April 2010 and amended in May 2010. The remaining counts were dismissed. Appellant admitted committing felony mayhem (Pen. Code, § 203) and felony assault with a deadly weapon (*id.*, § 245, subd. (a)(1)) with infliction of great bodily injury (*id.*, § 12022.7, subd. (a)). According to the probation report's summary of the relevant police report, the charges were based on an incident in which appellant allegedly beat the victim with a baseball bat and carved the victim's back with a piece of metal.

In July 2010, after the probation department recommended appellant be committed to DJJ, the juvenile court granted the defense request to have appellant evaluated by a psychologist. In August 2010, the psychologist recommended that appellant be placed at the Northern California Regional Center (CRC) in Humboldt, instead of DJJ. On August 31, the juvenile court indicated its intent to place appellant at CRC if the facility found appellant suitable for that program.

On September 22, 2010, a second petition was filed, alleging that appellant assaulted a fellow juvenile hall detainee by means of force likely to cause great bodily injury (Pen. Code, § 245, subd. (a)(1)). On October 14, the petition was amended to

reduce the allegation to misdemeanor battery (*id.*, § 242), and appellant admitted that allegation.

In November 2010, appellant was evaluated by another psychologist, who recommended either a 90-day DJJ diagnostic evaluation or a straight commitment to DJJ. On November 30, at a combined dispositional hearing on the two petitions, the juvenile court declared appellant a ward of the court, committed him to DJJ, and found the maximum term of confinement was 12 years.

In December 2010, the probation officer recommended dismissal of the second petition and the juvenile court did so on December 15. The court also affirmed the DJJ commitment on the first petition.

On appeal, we reversed the order of commitment, concluding the court lacked authority to dismiss the second petition in order to commit appellant to DJJ. The Supreme Court granted review and, on August 27, 2012, the court decided *Greg F.*, *supra*, 55 Cal.4th 393. On December 19, 2012, the high court transferred the matter back to this court for reconsideration in light of *Greg F.* Neither party filed a supplemental brief in this court following the transfer.

DISCUSSION

A juvenile court's authority to commit a minor to DJJ is a matter of statutory law. Pursuant to section 733(c), "[a] ward of the juvenile court who meets any condition described below shall not be committed to the [DJJ]: [¶] . . . [¶] (c) The ward has been or is adjudged a ward of the court pursuant to Section 602, and the most recent offense alleged in any petition and admitted or found to be true by the court is not described in subdivision (b) of Section 707, unless the offense is a sex offense set forth in subdivision (c) of Section 290.008 of the Penal Code."

The offense alleged in the second petition and admitted by appellant, misdemeanor battery (Pen. Code, § 242), is not an offense "described in subdivision (b) of Section 707" or a sex offense set forth in Penal Code section 290.008. Thus, pursuant to section 733(c), it could not provide a legal basis for committing appellant to DJJ.

Pursuant to section 782 and *In re J.L.* (2008) 168 Cal.App.4th 43, the juvenile court dismissed the second petition, so that under section 733(c) “the most recent offense[s] alleged in any petition and admitted or found to be true by the court” would be the felony mayhem and assault offenses, which are offenses “described in subdivision (b) of Section 707” that could support appellant’s DJJ commitment. In dismissing the second petition, the court stated it was doing so “in the interest of justice.”

Section 782 provides in relevant part: “A judge of the juvenile court in which a petition was filed, at any time before the minor reaches the age of 21 years, may dismiss the petition or may set aside the findings and dismiss the petition if the court finds that the interests of justice and the welfare of the minor require such dismissal, or if it finds that the minor is not in need of treatment or rehabilitation.”

In *Greg F.*, the Supreme Court examined the interaction between sections 733(c) and 782. (*Greg F.*, *supra*, 55 Cal.4th at pp. 400, 406.) The court held “that section 733(c) does not deprive the juvenile court of its discretion to dismiss a [section] 602 petition and commit a ward to [DJJ] when, in compliance with section 782, such a dismissal is in the interests of justice and for the benefit of the minor.” (*Greg F.*, at p. 402.) The high court reasoned, “Sections 733(c) and 782 *can* be harmonized. Section 733(c) prohibits a commitment to [DJJ] unless the minor’s most recent offense alleged in a petition is of a particular class. If the juvenile court exercises its discretion under section 782 to dismiss a [section] 602 petition, its decision does not nullify or abrogate section 733(c). It simply changes the ‘most recent offense alleged in any petition’ to which section 733(c) applies *in that particular case*.” (*Greg F.*, at p. 408.)

Appellant, having failed to file a supplement brief, does not argue that *Greg F.* is inapplicable in the present case, or that the juvenile court abused its discretion in dismissing the second petition under section 782. (*Greg F.*, *supra*, 55 Cal.4th at p. 413.) We will affirm the juvenile court’s orders.

DISPOSITION

The juvenile court’s orders are affirmed.

SIMONS, J.

We concur.

JONES, P.J.

NEEDHAM, J.